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COMMITTEE AGAINST TORTURE

Twenty-fourth session

SUMMARY RECORD OF THE 416th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 4 May 2000 at 10 a.m.

Chairman: Mr. BURNS

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GE.00-41874 (EXT)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Third periodic report of China (CAT/C/39/Add.2)

1. At the invitation of the Chairman, the members of the delegation of China, Mr. QIAO Zonghuai, Ms. LI Yanduan, Mr. Stephen Wong, Mr. LIU Boxiang, Mr. LIU Xinsheng, Mr. ZHANG Weida, Mr. CHEN Lihua, Mr. ZHAO Liping, Mr. XU Hong, Mr. TENG Wei, Mr. LI Yuqian, Ms. XUE Shulan, Mr. DONG Tonghui, Mr. REN Yisheng, Mr. WANG Xue-en, Ms. QI Xiaoxia, Mr. ZHU Yong, Mr. CONG Jun, Ms. LI Wen, Mr. John Dean, Mr. David Wong, Ms. Eliza Yau, Ms. Anita Ng and Ms. Eva Wong took places at the Committee table.

2. The CHAIRMAN welcomed the Chinese delegation which comprised representatives of both the Central People's Government and the Government of the Hong Kong Special Administrative Region, and invited it to present China's third periodic report.

3. Mr. QIAO Zonghuai (China) said that China attached great importance to its reporting obligation under the Convention against Torture. China had ratified the Convention in 1988 and one year later had submitted its first report, which had been followed, in 1992, by a supplementary report. China's second periodic report had been presented in December 1995. The third periodic report, which was before the Committee for consideration, had been drafted in close consultation with the Supreme People's Court, the Ministry of Public Security, the Ministry of Justice and a number of non-governmental organizations. It had been drawn up in accordance with the General Guidelines Regarding the Form and Contents of the Periodic Report to be submitted by States Parties and contained replies to the questions raised by the Committee during its consideration of previous reports.

4. It had always been the principle of the Chinese Government to oppose and prohibit torture and other cruel, inhuman or degrading treatment or punishment. It had taken effective steps to prevent the perpetration of such acts by State officials, especially judicial officers, and to punish those who had committed them. Since its accession to the Convention in 1988, China had earnestly fulfilled all its obligations under the Convention and had pursued its efforts to improve its legislation and enforce the relevant legal provisions against torture. For example, since the submission of China's second periodic report, the National People's Congress had adopted amendments to the Chinese Constitution and had approved a provision stipulating that the country would be governed in accordance with the rule of law. In 1996 and 1997, China had amended and improved its Penal Code and the 1979 version of its Code of Criminal Procedure. Both texts reaffirmed the fundamental principles of criminal law, such as the principle that offenders should be convicted and punished according to the law and that no person should be found guilty without being judged by a People's Court in accordance with the law. Those texts also contained more explicit provisions regarding the legally prescribed procedures to be followed by the judicial organs in collecting evidence and prohibited the extortion of confessions by torture or other unlawful means. The purpose of those provisions was also to enhance the role of lawyers in the protection of the legitimate rights and interests of suspects. Furthermore, in order to prevent torture during judicial procedures, the Chinese executive and judicial organs had formulated a series of legal and institutional measures. One example was the Regulations on the Use of Police Instruments and Weapons by the People's Police and the Regulations on the Supervision of Public Security Organs, which had been issued by the State Council in 1996 and 1997 respectively. The Ministry of Public Security had likewise published a set of service regulations governing the conduct of public security forces, including the Regulations on Procedures for Handling Criminal Cases by Public Security Organs. Similarly, the Ministry of Justice had adopted various regulations on the procedures to be

followed by judicial organs, while the Supreme People's Procuratorate had drawn up regulations on the reporting of offences and had issued rules banning the use of coercive measures against witnesses or the imposition of compulsory measures before legal proceedings had commenced, as well as rules on the length of detention.

5. He mentioned a number of binding instruments issued by the Supreme People's Court concerning the punishment applicable to judicial personnel of the People's Courts who broke the law during trials. An education and reform campaign had been launched throughout the country with a view to ensuring that members of the judiciary were impartial, fair, competent and well-disciplined. In 1999, 4,470 training courses had been run in the country for law enforcement officials and had been attended by 280,000 trainees. Furthermore, in order to familiarize prison staff with international human rights standards, the Ministry of Justice had compiled handbooks containing all the relevant instruments of the United Nations (Convention against Torture, Universal Declaration of Human Rights, Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials) together with Chinese laws and regulations.

6. The Chinese Government had not only raised the standards of judicial staff, it had also strengthened supervision and internal discipline procedures in order to avoid any abuse of authority. More than 3,000 departments had been investigated; over 13,000 judicial officers had been charged with torture or taking advantage of their functions and powers and the law enforcement organs had been placed under the supervision of the People's Political Consultative Conference. Furthermore, open trials provided an opportunity to denounce acts of torture and the extortion of confessions by torture during criminal proceedings. Some judicial organs had set up services such as telephone lines or Web sites with a view to making their work more transparent.

7. As part of its efforts to ban torture, the Chinese Government had stepped up its campaign to heighten citizens' awareness of the law and international human rights instruments with books and other publications and through the mass media. The Government provided legal advice and legal assistance to the general public in order to protect citizens' legitimate rights and interests.

8. He cited some specific examples to illustrate the Chinese Government's efforts in that direction. For example, a hotline set up by the Ministry of Justice provided legal advice and assistance by telephone and a travelling exhibition organized with the assistance of the Supreme People's Procuratorate on the functions and powers of procurators had produced positive social effects in the country. Those measures had led to a substantial reduction in cases of torture over the previous five years. The number of persons convicted of extorting confessions by torture and inflicting physical violence on persons in custody had fallen from 193 in 1998 to 173 in 1999. In conclusion, he pointed out that China was a developing country with a population of 1.2 billion, 900 million of whom still lived in rural areas. The country's economic and social development was therefore uneven. In addition, for historical reasons, China's legal system, especially the system of judicial supervision, still had some weak links which hindered the eradication of torture. Nevertheless, the Chinese Government was making progress in that respect and hoped that the Committee's constructive suggestions would make it possible to do even more to prevent the use of torture in the future.

9. Mr. MAVROMMATIS (Rapporteur for China), turning to the first part of the China's report, welcomed the amendments made in 1999 to the Chinese Constitution, which provided that henceforth China would be governed by the rule of law, in other words, in accordance with domestic law, customary law, international treaty law and, consequently, the Convention against Torture. It would be useful to know whether current laws and practices were consistent with those new constitutional provisions. He commended the cooperative spirit displayed by China when it presented its various periodic reports, including the supplementary report and the core document. They were all, excellent,

had been drawn up in accordance with the Committee's General Guidelines on the Form and Contents of Reports and had taken account of the questions raised by Committee members and of the conclusions and recommendations they had put forward when earlier reports had been considered. In that connection, it would be helpful if the next periodic report from China would base itself also on information supplied by non-governmental organizations, whose input was vital.

10. He noted with satisfaction that China had revised 1979 version of its Penal Code and Code of Criminal Procedure. While no tangible results had yet been achieved, there was no denying that China had embarked on a process of harmonizing its domestic legislation with international standards. Both texts, which had been in force for three years, offered the appropriate authorities the opportunity to check whether the procedures followed were consistent with international standards and to eradicate the torture which had existed for decades. He was, however, concerned by the arbitrary nature of administrative detention (in cases where the separating line between a real offence and a mere error was not clear) and invited the Chinese Government to put an end to that practice and to base itself on the principle thereby detention could only result from legal or judicial process.

11. He would like some explanations concerning the "other criminal cases" heard by military tribunals referred to in paragraph 36 of the core document (HRI/CORE/1/Add.21/Rev.1), adding that the latter should not hear and decide civil cases save in exceptional circumstances. He also wished to know whether, as paragraph 52 of the same document might suggest, any legal provisions existed which did not rest on the principle that international treaty law took precedence over municipal legislation. Furthermore, wondered about the total absence in the report of information about special forms of torture inflicted on women and domestic violence, their incidence and the measures taken by the Chinese Government to combat them. Similarly, he wished to know why the vast majority of orphans in China were girls and requested fuller information about family planning in China.

12. Turning to general matters, particularly the issue of the Falungong, Mr. Mavrommatis said that the Committee against Torture had taken an interest in the question of religious sects long before it had appeared on the agendas of the human rights organizations. He would welcome details of the case of Ms Chen Zixiu, a member of the Falungong from the province of Shandong, who had been the victim of torture, according to an NGO called "Human Rights in China". Apparently, an inquiry into the circumstances surrounding Ms Chen's death had been ordered by the World Organization against Torture, and he would like to know what its findings had been.

13. He recalled that capital punishment was not forbidden under either the Convention or the International Covenant on Civil and Political Rights, although the latter instrument tended to favour its abolition. Nevertheless, the way in which an execution was carried out and the methods used might be contrary to the provisions of article 16 of the Convention. Admittedly, the Chinese authorities had introduced executions by lethal injection following a recommendation by the Committee, but according to certain information received, the use of injections remained the exception and earlier practices — parading the condemned person through the streets, execution by firing squad, etc. — still persisted: the central Government should ensure that the recommendations were enforced throughout China.

14. The State party had attempted to incorporate provisions into its domestic legislation which reproduced the definition in article 1 of the Convention. However, on the one hand, those provisions appeared to apply only to public servants in the strict sense of the term and, on the other, a regulation dating from 1999 stated that torturers could be prosecuted only if their victim was killed or seriously injured: psychological torture, in particular, was not taken into consideration. It would therefore be necessary to fill in those gaps, which were also incompatible with article 2 of the Convention. In that connection, he would like more information on the issue of whether the orders of a superior could be cited as an excuse for acts of torture (that question was even more pressing in respect of Hong Kong).

15. He considered that the information provided in respect of article 3 in the previous report was inadequate. In view of a recent case of reciprocal extradition between China and the Russian Federation, the Committee needed to know what legal provisions and procedures existed to guarantee that persons who might be subjected to torture in their own countries would not be returned there. It would also be useful to know whether the procedure governing extradition, *refoulement* and expulsion allowed for recourse or review of the decision by another jurisdiction. Under article 4 of the Convention, he recalled, all acts of torture as defined in article 1 should be explicitly considered as offences and should be punishable by appropriate penalties.

16. Under article 5 of the Convention, States parties should establish their jurisdiction not only over offences committed on their territory or by their nationals, but over any acts of torture, wherever they had been committed. It would therefore be important to know whether Chinese legislation included provisions which allowed the State party to arrest, prosecute or extradite, independently of any existing extradition treaty, a known torturer who was on its territory. Since article 7 was intended to ensure a fair trial for all, he asked whether Chinese legislation contained any provisions to that effect, for instance provisions guaranteeing everyone the right to a speedy trial and/or the advice of a lawyer. He also wished to know whether there was legal aid system in the State party which allowed accused persons, especially ones who risked a prison sentence, to obtain the services of a lawyer, and whether that also applied to the early stages, immediately after arrest, when people were most likely to be tortured. In respect of paragraph 21 of the report, he said that the Committee needed to know how the provisions of article 8 were implemented in the absence of an extradition treaty, rather than the list of countries with which China had concluded such treaties. In respect of article 9, it would be useful to know what mutual judicial assistance existed in the case of States with whom China had no mutual judicial assistance treaty.

17. Mr. SILVA HENRIQUES GASPAR (Co-Rapporteur for China) thanked the Chinese delegation for the frank and fruitful dialogue which had developed. He congratulated the State party for its efforts to develop mandatory training and study of appropriate methods and procedures of interrogation, in order to prevent the extraction of confessions by force. The State party should likewise be congratulated on the recent changes to the Code of Criminal Procedure, designed to improve standards for the protection of suspects' and accused persons' rights, which had introduced an adversarial system with trials held in public and abolished certain long-standing practices relating to internment and other measures of administrative coercion. China's efforts to prevent the use of force during interrogation, referred to in paragraph 27 of the report, were also worthy of encouragement, and it would be interesting to know what specific measures had been taken and what the initial results had been.

18. The Chinese authorities had also made a considerable effort to implement the provisions of articles 12 and 13 of the Convention and to take the necessary measures in cases of torture by agents of the State, as shown by paragraphs 37 to 39 of the report in particular. The report gave figures for the number of complaints and the penalties imposed, but they seemed very few compared with the very large number of allegations in the documents issued by non-governmental organizations, which had been brought to the Committee's and the delegation's attention: could the delegation provide information about the type of penalty imposed and comment on the apparently considerable gap between the many allegations of torture and ill-treatment and the investigations conducted and penalties imposed, which were much fewer in number?

19. Article 15 of the Convention obliged States parties to ensure that any statement or evidence obtained by torture should not be admissible, and that requirement applied to indirect as well as direct evidence. Did the Chinese courts take that fact into account: would they consider evidence obtained as a result of an illegally obtained confession to be inadmissible, for example? What attitude would the courts take to an allegation of torture made in a closed trial, for instance when State secrets were

involved? In such a case, how did China ensure that its obligations under article 15 were fulfilled, if the trials were not held in public and no external monitoring could be ensured? It would also be useful to know whether accused persons had the right to remain silent.

20. Experience had shown that the danger of violations of article 16 of the Convention was greatest in cases of arbitrary detention where supervision was inadequate. The existence of a system of administrative detention and other custodial measures such as re-education through labour was a source of concern in that regard. He would welcome clarification, from the point of view of the application of article 16, of existing administrative measures which did not seem to be covered by any safeguard that would effectively prevent cruel treatment or punishment. There seemed to be no clear-cut definition of non-criminal behaviour warranting the application of such measures, no judicial supervision and no provision for access to a lawyer by the persons concerned. He would also welcome particulars of the mandatory internment regime for the mentally ill. According to paragraphs 54 and 56 of the report concerning the review of death sentences with a two-year stay of execution, the death penalty could be commuted to life imprisonment if the convicted person committed no further crime during that two-year period. It was hard to see, however, what kinds of offences could be committed by a person who was sure to spend the entire period in detention.

21. There were also a number of specific issues to be raised. First, under what conditions did detainees have access to a doctor? Could they be examined at their request by a practitioner chosen by themselves or their family, or were they seen by an officer of the prison medical service? Second, it was a well-known fact that persons deprived of their liberty ran the greatest risk of being tortured during the period of police custody, i.e. the period between being arrested and being brought before an independent judicial authority, who ruled on the lawfulness or otherwise of the deprivation of liberty. Reducing that period was one of the best ways of preventing torture and ill-treatment in police stations. But it seemed from the information received that policy custody could be extended in China for up to 10 days, or even 37 days according to some sources. He wished to know more about the situation in that regard and about the rights of persons held in police custody. Did they have access to counsel of their choosing and, if so, at what stage of the proceedings? Was counsel present at the first examination? He also inquired about the circumstances in which meetings with counsel took place: in private, in the presence of an official but under acceptably discrete conditions, or under close surveillance. There had been reports of the filming of meetings with counsel. A further important point was whether legal assistance could be denied and, if so, in what circumstances and for what category of proceedings. What happened, for example, when a case was held to fall within the ambit of State secrecy?

22. Articles 12 and 13 of the Convention stipulated that all acts of torture committed by a public official should be systematically subjected to a prompt and impartial investigation . But according to a directive by the Principal Public Prosecutor dated 16 September 1999, investigations into the offences specified in article 247 of the Penal Code were to be instituted only in the most serious cases, for example when confessions or statements had been obtained by the use of violence from more than three persons or on more than three occasions: the directive was difficult to reconcile with the requirement that an investigation should be undertaken in every case.

23. Mr. YAKOVLEV said that the development of a State's legal system was a telling indicator of the progress of a society and he therefore welcomed the positive steps taken by a great country like China. However, legislation was one thing and its practical application another. The enactment of a good law was just the beginning and every jurist knew that its implementation could be undermined by the way in which it was interpreted. Thus, article 247 of the Penal Code, which made satisfactory provision for the punishment of acts of torture, had been interpreted in a disturbing way by a Chinese commentator, Sun Qian - who had admittedly not been expressing the official view - in an article

published in 1998 in a legal journal to which Amnesty International had drawn attention. In that article, the author had stated that brutality was understandable and acceptable where circumstances so required and where it was motivated by the general interest, and that torture was necessary in certain cases of emergency. That was a very serious assertion because it implied that torture could be deemed not only acceptable but also necessary. Although the view expressed was that of a commentator, legal scholarship was known to reflect existing practice or was expected to offer guidance. In any case, it was a view that was totally incompatible with the Convention. He therefore requested the Chinese delegation to clarify the issue raised and to comment on the application of article 247 of the Penal Code in practice.

24. Mr. EL MASRY, referring to paragraph 7(a) of the third periodic report, which mentioned abolition of the system of detention for interrogation as one of the measures taken to strengthen guarantees against torture, asked whether any measures had been taken with regard to detention in re-education through labour camps. Many non-governmental organizations had reported the existence of such camps in the Uigur Autonomous Region of Xinjiang, in which Uigur prisoners were allegedly compelled to work in extremely harsh conditions. He asked whether the training courses for law enforcement personnel were attended by all members of the forces of law and order, including those outside the criminal justice system.

25. Ms. GAER said that, while she viewed the legislative reform under way in China as crucially important, she feared, like some non-governmental organizations, that it affected procedure rather than substance, especially in the area of criminal justice. Measures such as the abolition of reasoning by analogy in law were certainly a major step forward but lack of change in other areas, such as the existence of places of detention outside the judicial penal system, remained a source of concern and raised doubts as to whether the Convention was being fully applied in that regard.

26. According to paragraph 9 of the third periodic report, the Regulations on the Use of Police Instruments and Weapons by the People's Police clearly defined the circumstances in which police instruments and weapons were to be used. She wished to know which police instruments were deemed to be compatible with the regulations. A number of non-governmental organizations had reported that the police sometimes used electric prods or batons: were such instruments allowed and in what circumstances could they be used?

27. She noted that, according to paragraph 10(d) of the third periodic report, the Supreme People's Court had issued provisions requiring all cases to be tried in open court except those involving State secrets or personal privacy and those concerning minors. The exceptions cited were a source of concern and raised the general issue of transparency of criminal justice procedures. For example, one non-governmental organization deplored the fact that information on imprisonment and convictions or even records of court hearings were not systematically published and that official authorization was still required to attend a trial. Were those reports accurate?

28. With regard to article 7 of the Convention and access to counsel, she asked what happened if a person was not charged with a criminal offence but placed in administration detention in an internment centre or a re-education through labour camp. Could such a person consult a lawyer? Was it true that defendants in criminal proceedings could see a lawyer only after the first stage of the inquiry? If it was, the situation was extremely worrying because arrested persons were most vulnerable during the initial period of detention.

29. According to paragraph 64 of the third periodic report, the Chinese Penal Code defined a practitioner of torture more broadly than the Convention and did not differentiate between torture by a public official and by any other person. But some sources claimed that the provisions concerning

torture and ill-treatment were not applied to law enforcement personnel in detention centres or re-education camps. She requested the Chinese delegation to clarify that point and to indicate whether officials belonging to that category had been prosecuted and punished as appropriate for acts of torture. She welcomed the data provided in paragraph 68 of the report regarding investigations by the Chinese inspectorate. She would appreciate receiving a breakdown of the statistics, if possible, by category of crime, region, sex of the perpetrator, sex of the victim, etc.

30. Death in detention was an issue of great concern. The figures provided by Amnesty International were deeply disturbing. As apparently only one third of all cases of torture were prosecuted, the question arose whether the only cases brought before the courts were those in which detainees had been particularly badly treated or had died in detention. Another subject of concern was violence among inmates. According to a number of sources, some inmates acted as leaders and stirred up violence in prisons. Were there regulations to punish such behaviour? If an inmate was ill-treated or even killed by another inmate, who was responsible? Would the authorities undertake an investigation in such cases?

31. Violence could also assume specific forms depending on a person's sex. She asked whether complaints of sexual violence had been recorded and how the staff responsible for supervising women detainees was composed. According to NGO reports, a number of Tibetan women, especially nuns, had been sexually assaulted and raped, and some had allegedly died in prison as a result of sexual abuse. Could the victims of such acts of violence file a complaint and demand compensation and rehabilitation? Had law-enforcement officers ever been prosecuted and punished for sexual violence? Had the problem of violence based on sex been incorporated in training courses for officials? It had also been reported that organs could be removed from the bodies of executed persons, despite the fact that the prior consent of the condemned person or next of kin was normally required in such cases. How was the prison population informed and consulted in that regard? Lastly, with regard to access to complaint mechanisms, a source had reported that many accused persons in the Autonomous Region of Xinjiang complained of being subjected to acts of torture, but that the courts failed to take account of their complaints and did not transmit them to the public prosecutor. How did the Chinese Government protect the right of detainees to lodge complaints?

32. Mr. CAMARA raised the question of the right to silence of a person under arrest or interrogation. He understood that the matter was currently being discussed in China among specialists in criminal law. He was interested in hearing the Chinese delegation's comments on the subject, since it was a fundamental right and a guarantee against torture. Referring to article 48 of the Penal Code (para. 54 of the report), he expressed surprise that a person could be sentenced to death with a stay of execution, a penalty that must entail considerable psychological hardship. Could the sentence be commuted to a less severe penalty?

33. Mr. RASMUSSEN, referring to the application of article 14 of the Convention, drew attention to the fact that there were more than 200 centres for the rehabilitation of victims of torture in the world. He understood, however, that there were no such centres in China, a situation that the Chinese authorities justified on the grounds that torture victims could be treated under the general health system. But the rehabilitation of torture victims called for special skills. Moreover, many States, acknowledging the importance of rehabilitating torture victims, offered financial support to rehabilitation centres or contributed to the United Nations Voluntary Fund for Victims of Torture. But China seemed to be one of the four or five countries that had never contributed to the Fund. What was the current position of the Chinese Government on the question of rehabilitation of victims of torture?

34. The CHAIRMAN, speaking in his personal capacity, said he wished to know what exactly was the position of the administrative detention regime in China and what mechanisms existed to protect the

rights of detainees. With regard to the death penalty, he was particularly concerned to note that executions could take place in public. Having learned that the number of executions carried out the previous year had not declined and indeed had reportedly increased, he inquired about the exact number of persons executed.

35. According to the report prepared by the Special Rapporteur of the Commission on Human Rights on torture (E/CN.4/2000/9), substantial changes had occurred in China over the past 20 years and ill-treatment, although it had not disappeared, had substantially declined. He was alarmed to note, however, on taking a closer look at the identity of the tortured persons, that they often belonged to minority groups, i.e. ideological, religious or national minorities. The use of torture by electricity was also mentioned by the Special Rapporteur. In that connection, he was interested in hearing more about the case, mentioned by the Special Rapporteur in paragraph 216 of his report, of the death under torture of an Air Force major arrested in 1998 and about the fact that the investigation had concluded that the allegations of torture were unfounded. If the Chinese delegation was not familiar with the case, it should reply later in writing. Lastly, given the numerous allegations of ill-treatment and torture of Tibetans and inhabitants of the Xinjiang region, he requested the delegation to report on measures taken to remedy the situation and to prevent such acts.

The meeting was suspended at 12.05 and resumed at 12.15 p.m.

36. The CHAIRMAN invited the Committee to consider the second part of the report of China concerning implementation of the Convention in the Hong Kong Special Administrative Region.

37. Mr. QIAO Zonghuai (China) recalled that Hong Kong had become a Special Administrative Region on 1 June 1997, and that since then the Chinese Government had been responsible for the Region's foreign affairs and had assumed responsibility for international obligations arising from implementation of the Convention. Under the Basic Law, the Region had a legal and administrative system of its own which would be maintained for 50 years, so that implementation of the Convention there was not strictly the same as in mainland China. It was therefore the Government of the Special Administrative Region which had drafted that part of the report, and the same procedure would apply to Macao, which had been returned to China on 20 December 1999.

38. Mr. WONG (China), introducing Part II of the report concerning the Hong Kong Special Administrative Region, said that when he had presented Hong Kong's report in 1995 he had stated that the Basic Law, which had become Hong Kong's constitutional document, guaranteed that the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights would remain in force. Article 28 of the Basic Law expressly prohibited torture, and Hong Kong continued to enjoy all the human rights safeguards that had long been in place and which were described in the report.

39. He was pleased to inform the Committee that the monitoring procedure of the Independent Police Complaints Council was well established, and had indeed been strengthened by the appointment of former Council members and other community leaders as independent observers of investigations conducted by the Complaints Against the Police Office. Concerning the question of the Vietnamese refugees, which the Committee had raised in its concluding observations of 17 November 1995, he was pleased to report that a decision had been taken in February 2000 to allow refugees, non-nationals and members of their families to apply for permanent settlement in Hong Kong in view of the fact that the Pillar Point Refugee Centre would be closing for good.

40. Regarding the case of the four police officers found guilty of assaulting a drug addict to extract a confession, he recalled that the decision not to charge those officers under the Crimes Ordinance had

been strongly contested. In that connection, in Hong Kong, as in any other common law jurisdiction, a decision whether to prosecute, and if so on what charge, depended on the situation prevailing at the time the decision had to be taken, and it was sometimes better to opt for lesser charges if they offered a better chance of securing a conviction. In the case concerned, the evidence available was not in his view sufficient to secure a conviction under the Crimes Ordinance.

41. On the question of the independence of the judiciary and the rule of law, and more specifically in regard to legal action in respect of right of abode, he assured the Committee that the interpretation of the Basic Law by the Standing Committee of the National People's Congress was legal and constitutional, and entirely consistent with the rule of law. Lastly, in response to the Committee's concerns as to the independence of the judiciary, he reaffirmed the willingness of the Hong Kong authorities to respect that fundamental principle, and its total commitment to implementation of the Convention. He was ready to answer any questions the Committee might wish to ask.

42. Mr. MAVROMMATIS welcomed the decision taken by China to continue to implement international instruments after the return of Hong Kong to China. Referring to article 21 of the Convention and the related declaration, he said that the provisions it contained existed in numerous international instruments, but had never been invoked. At most, such provisions might be appropriate in the context of such bodies as the Council of Europe or the Organization of American States. The protection the article was supposed to provide thus appeared to be effective only in theory. On the other hand, he believed that article 22 of the Convention was important, and he would like to see China and the Hong Kong Special Administrative Region make a joint declaration under that article. In fact, protection of human rights and fundamental freedoms became a reality only if the necessary mechanisms were available, such as a body responsible for forwarding individual communications or petitions, a national human rights commission or a mediator.

43. He had not received a reply to his question on domestic violence and trafficking in women, and would like to be given some details about how those problems were tackled. While he welcomed the positive outcome to the problem of Vietnamese refugees in Hong Kong, he would like to know whether as a general rule judicial supervision continued to apply even after decisions had been taken by the chief of the administration and the official hierarchy.

44. In his view the definition of "lawful authority" was much too broad, and should be made narrower and more specific. While he was glad that article 39 of the Basic Law incorporated some of the provisions of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights, he regretted that it contained no full definition of torture which would make it possible to prosecute and punish the perpetrators of all the offences listed. Similarly, he welcomed the creation of the Independent Police Complaints Council, but was surprised to learn that no complaints had yet been filed. Why should that be? Was the definition inappropriate? Was it ignorance, the cumbersome nature of the procedures making it difficult to establish proof, or was it lack of confidence in the investigation process?

45. Referring to the case of the four police officers mentioned by Mr. Wong, he said that although he was fully aware that it was sometimes preferable to opt for less serious charges if they offered a better chance of securing a conviction, he considered that in that specific case the reason given was very unconvincing and could detract from the effectiveness of justice.

46. On the question of reuniting families, he wondered whether problems of discrimination might arise if, for example, in the same family one child was born in Hong Kong and another in mainland China. He would appreciate clarification on that point.

47. Lastly, since the chief objective was to reduce the occurrence of torture, he could suggest certain steps to achieve that objective. Greater efforts should be made to make police training more effective using available innovative scientific methods so as to ensure at least that officers did not resort to violence through incompetence. An independent, swift and effective system of investigation should be set up, to examine complaints and start proceedings. Those convicted should be severely punished, and there should be frequent, unannounced inspections of places of detention to ensure that no violence was used and transparency.

48. Mr. SILVA ENRIQUES GASPAR, referring first to articles 12 and 13 of the Convention, pointed out that for an investigation to be impartial it had to be undertaken by a body with the necessary composition and powers to guarantee an independent investigation. He doubted whether the Complaints Against the Police Office fulfilled those requirements, in view of the limited powers of the Independent Police Complaints Council. Could the delegation give more details on that point? Second, Hong Kong's judicial system appeared generally speaking to meet the requirements of article 15 of the Convention, since in some cases the courts had declared evidence obtained by torture to be inadmissible. However, he feared that those statistics were only the tip of the iceberg.

49. Ms. GAER shared the concern expressed by Mr. Mavrommatis concerning the absence of any mention of cruel, inhuman or degrading treatment in the Basic Law and in the definitions of torture. Even if the law did not explicitly prohibit such treatment, it was clear from the report and from the evidence that torture was not confined to acts committed by officials, but that it also included acts committed by others when carrying out official duties. She would appreciate clarification concerning the nature of such duties. In view of a certain ambiguity in the Basic Law, she would also like to know whether it was possible to be charged with torture and in the end convicted for acts of violence. Further, could the delegation confirm whether, if a person could prove that he had lawful authority to commit acts of torture, that would have the effect of invalidating the prohibition of torture?

50. The report showed that a high proportion of confessions were found inadmissible by the courts on the grounds that they might have been obtained by force. She asked whether more detailed statistics were available, and also whether any of the recommendations made - such as instituting a commission on legislative reform or recording interrogations on video - had been implemented. Lastly, concerning sexual violence in prisons, she would like to know whether any security and surveillance measures existed, whether the procedure for filing complaints was sufficiently simple, and whether any efforts had been made to raise awareness of problems of sexual discrimination. Also, were there any repatriation, compensation and rehabilitation mechanisms for the victims of such ill-treatment, or records of cases in which those responsible had been punished?

51. The CHAIRMAN said that the Chinese delegation would be invited to respond to further questions by members at a subsequent meeting of the Committee.

The meeting rose at 1 p.m.